

be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.

(c) Another type of working foreman or working supervisor who cannot be classed as a bona fide executive is one who spends a substantial amount of time in work which, although not performed by his own subordinates, consists of ordinary production work or other routine, recurrent, repetitive tasks which are a regular part of his duties. Such an employee is in effect holding a dual job. He may be, for example, a combination foreman-production worker, supervisor-clerk, or foreman combined with some other skilled or unskilled occupation. His non-supervisory duties in such instances are unrelated to anything he must do to supervise the employees under him or to manage the department. They are in many instances mere "fill-in" tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. In other instances the nonsupervisory, non-managerial duties may be the principal ones and the supervisory or managerial duties are subordinate and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties. Typical of employees in dual jobs which may involve a substantial amount of non-exempt work are:

(1) Foremen or supervisors who also perform one or more of the "production" or "operating" functions, though no other employees in the plant perform such work. An example of this kind of employee is the foreman in a millinery or garment plant who is also the cutter, or the foreman in a garment factory who operates a multiple-needle machine not requiring a full-time operator;

(2) Foremen or supervisors who have as a regular part of their duties the adjustment, repair, or maintenance of machinery or equipment. Examples in this category are the foreman-fixer in the hosiery industry who devotes a considerable amount of time to making adjustments and repairs to the ma-

chines of his subordinates, or the planer-mill foreman who is also the "machine man" who repairs the machines and grinds the knives;

(3) Foremen or supervisors who perform clerical work other than the maintenance of the time and production records of their subordinates; for example, the foreman of the shipping room who makes out the bills of lading and other shipping records, the warehouse foreman who also acts as inventory clerk, the head shipper who also has charge of a finished goods stock room, assisting in placing goods on shelves and keeping perpetual inventory records, or the office manager, head bookkeeper, or chief clerk who performs routine bookkeeping. There is no doubt that the head bookkeeper, for example, who spends a substantial amount of his time keeping books of the same general nature as those kept by the other bookkeepers, even though his books are confidential in nature or cover different transactions from the books maintained by the under bookkeepers, is not primarily an executive employee and should not be so considered.

§541.116 Trainees, executive.

The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

§541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The \$155 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated bi-weekly on a salary basis of \$310, semi-monthly on a salary basis of \$335.84 or monthly on a salary basis of \$671.67. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary

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test for exemption as an "executive" is \$130 per week for other than an employee of the Federal Government.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

(d) The validity of including a salary requirement in the regulations in subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling v. Yeakley*, 140 F. (2d) 830 (C.A. 10); *Helliwell v. Haberman*, 140 F. (2d) 833 (C.A. 2); and *Walling v. Morris*, 155 F. (2d) 832 (C.A. 6) (reversed on another point in 332 U.S. 442); *Wirtz v. Mississippi Publishers*, 364 F. (2d) 603 (C.A. 5); *Craig v. Far West Engineering Co.*, 265 F. (2d) 251 (C.A. 9) cert. den. 361 U.S. 816; *Hofer v. Federal Cartridge Corp.*, 71 F. Supp. 243 (D.C. Minn.).

[38 FR 11390, May 7, 1973, as amended at 40 FR 7092, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Paragraphs (a) and (b) in § 541.117 were revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 29, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of paragraphs (a) and (b) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than \$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The \$225 a week or \$250 a week may be translated into equivalent amounts for periods longer than 1 week. For example, based on \$250 a week, the requirement will be met if the employee is compensated biweekly on a salary basis of \$500, semimonthly on a salary basis of \$541.67 or monthly on a salary basis of \$1083.33. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is \$180 per week be-

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ginning February 13, 1981 and \$200 per week beginning February 13, 1983 for other than an employee of the Federal Government.

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§ 541.118 Salary basis.

(a) An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any work-week in which he performs no work.

(1) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under